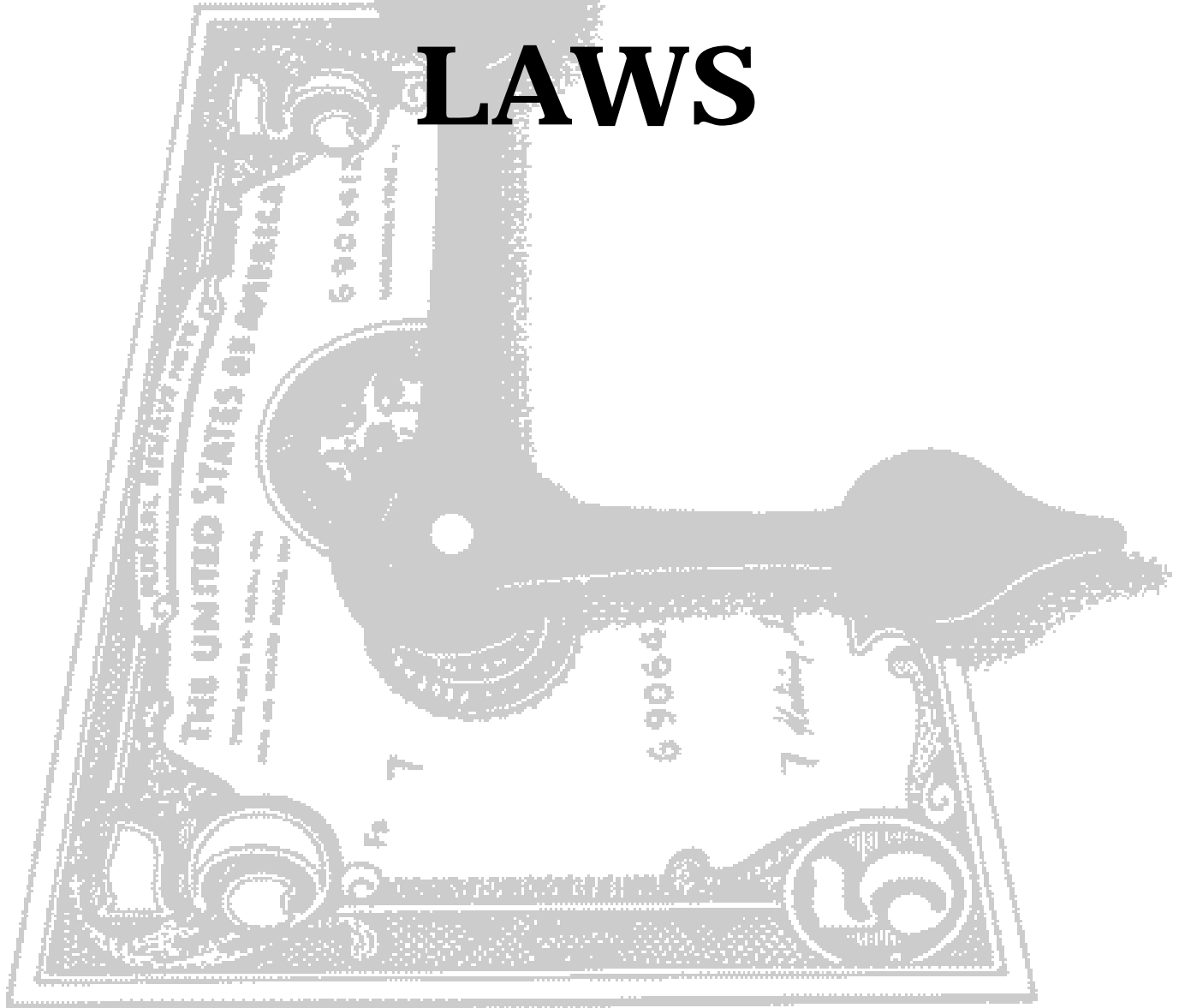


A SUMMARY OF VERMONT WAGE AND HOUR LAWS



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INTRODUCTION

The Vermont Department of Labor prepared this summary of Vermont wage and hour laws to provide uncomplicated and straightforward answers to frequently asked wage and hour inquiries. Although it is not meant to be an exhaustive handbook covering all employment related questions, we hope you will find it helpful in answering your questions.

If you have further questions please feel free to contact our Wage and Hour Program at (802) 828-0267.

WAGE AND HOUR PROGRAM

Vermont's Wage and Hour program functions under Title 21, Vermont Statutes Annotated (VSA), Chapter 5 (Subchapters 1 through 4), in accordance with the Federal Fair Labor Standards Act (FLSA), as amended.

Functions of the Division include:

- ▶ investigation and attempted resolution of disputes involving wages, benefits and wage supplements;
- ▶ education and enforcement concerning minimum wage and overtime requirements;
- ▶ education and enforcement concerning child labor laws;
- ▶ providing employers with legally required posters and policies;
- ▶ responding to inquiries and providing information concerning employer/employee related issues including Vermont's family and parental leave act, fair employment practices act, sexual harassment act, and laws addressing military, legislative and juror duty leave. Information is also provided concerning Vermont's drug testing laws and the polygraph protection act.

JURISDICTION

There are both State and Federal laws (e.g. the Federal Fair Labor Standards Act or FLSA) governing wage and hour (minimum wage rate, agreed upon rate, and overtime rate); payroll record keeping practices; child labor; parental and family leave; medical leave; etc. which apply to employer/employee relationships in Vermont. Where differences exist, the law providing greater employee protection is the law to which the employer must adhere.

Employees falling under federal jurisdiction include:

- ▶ those working for enterprises which are engaged in interstate commerce;
- ▶ those working in businesses which do an annual gross volume of sales and services of at least \$500,000 (note: includes retail businesses which were in operation effective 3/31/89 and did an annual gross volume of \$362,500, or were in the service industry and did an annual gross volume of \$250,000);
- ▶ those working for laundry or construction businesses which were in operation effective 3/31/89, (regardless of the business' dollar volume);
- ▶ those working in retail and/or service businesses who are 'individually' engaged in interstate commerce (regardless of the dollar volume of the enterprise)
- ▶ those employed in the newspaper industry if the business does a circulation of at least 4,000 papers;
- ▶ those working in residential homes, hospitals, public or private schools (including daycare);
- ▶ those working in federal, state or local governments;

MINIMUM WAGE

The Vermont minimum wage law covers employers employing two or more employees, unless exempted by statute. The Vermont minimum wage is \$6.75 per hour, effective January 1, 2004 and \$7.00 per hour effective January 1, 2005.

Exemptions include, but are not limited to:

- ▶ full time high school students
- ▶ agriculture workers
- ▶ taxi cab drivers
- ▶ outside salespersons

- ▶ newspaper or advertisement home delivery persons
- ▶ persons employed in the activities of a publicly supported non-profit organization (except laundry employees and nurses aides or practical nurses)
- ▶ a person employed in a bona fide executive, administrative, or professional capacity
- ▶ a person employed in domestic service in or about a home
- ▶ a person employed by the United States

Although full time high school students are exempt from Vermont's minimum wage requirement, federal law provides for a minimum compensation for these students. If you are a federally covered employer interested in the federal youth minimum wage, contact the U.S. Department of Labor at (802)951-6283 for more information.

Individuals employed as service or tipped employees (those who customarily and regularly receive more than \$30/month in tips) in the hotel, motel, tourist or restaurant industry may be paid a base rate of \$3.58, with the employee receiving a maximum tip credit of \$3.17 per hour, effective January 1, 2004. Effective January 1, 2005 the base rate is \$3.65 per hour and the maximum tip credit is \$3.35.

Note: At any time when the federal minimum wage becomes higher than the Vermont minimum wage, the Vermont minimum wage will increase to the federal rate, effective the same day.

OVERTIME

Vermont's overtime compensation law covers employers employing two or more employees, unless specifically exempted by statute. Exemptions from the Vermont overtime compensation law include:

- ▶ Employees of retail or service establishment
- ▶ Employees of an amusement or recreational establishment (with restrictions)
- ▶ Employees of a hotel, motel or restaurant establishment

- ▶ Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residence and residential care homes (with restrictions)
- ▶ Employees of a business engaged in transportation of persons or property to whom federal FLSA overtime requirements do not apply
- ▶ Employees of a political subdivision of the state

When covered employees work in excess of 40 hours during a workweek, an employer shall compensate them with at least one and one-half times the regular wage rate.

***Note:** Even if exempt from overtime under state law, an employee covered by the FLSA may still be entitled to overtime. Contact the U.S. Department of Labor at (802)951-6283 for more information*

Specific issues which often arise when addressing proper overtime compensation:

1. The standard for calculating overtime hours is based upon a single workweek. An employer is not permitted to average the hours worked by an employee over two or more weeks, regardless of the pay schedule utilized by the employer.
2. Bonuses, which are considered part of the regular rate as remuneration for employment (paid in lieu of wages), are included in determining the regular hourly rate of an employee for purposes of computing the proper overtime compensation. However, gifts, rewards for services, discretionary or special occasion bonus, reimbursement for expenses, employer benefit contributions and pay for foregoing holidays and vacations are not included when determining the regular rate of pay for overtime calculations.
3. When an employee works in two or more different jobs, with different rates of pay, in a single workweek, the regular rate for that week is the average of the combined rates, i.e. the total earnings

from all employment positions are combined and then divided by the total number of hours worked in all jobs. This figure is then utilized to calculate overtime pay.

COMPENSATORY TIME

In Vermont, there is no legal provision pertaining to the use of compensatory time in lieu of overtime payments. As such, questions or issues arising under this topic should be directed to the U.S. Department of Labor. Generally, under the federal provisions, comp time may only be utilized in limited circumstances.

ON CALL TIME

In Vermont, the statutes are also silent as to the compensation of employees for “on call” time. However, under federal law, for an employee to be compensated for their on call time, their liberty must be more than slightly restricted, meaning he/she cannot use his/her time effectively for their own purposes. Carrying a beeper or merely leaving a telephone number does not qualify for on call compensation.

TRAVEL TIME

As the Vermont statutes do not address compensation for travel time of employees, we defer to the federal regulations in this area. Generally, in determining whether travel time is working time, the kind of travel involved is evaluated. Ordinary home to work travel, which is a normal incident of employment, is not compensable. However, several instances of travel time are considered work time for which the employee is due proper compensation. For example, if an employee, after completing his/her day of work and returning home, is summoned and travels for a substantial distance to perform an emergency service for the employer, this travel time is compensable. In addition, in most circumstances, travel for a special one-day assignment in another city, travel all in a day’s work and travel away from home when it cuts into the employee’s workday are all considered working hours for the employee.

TRAINING

Attendance at lectures, meetings, training programs and similar activities are not considered working time, and compensation is not due if:

1. Attendance is outside of the employee's regular working hours; AND
2. Attendance is in fact voluntary; AND
3. The course, lecture or meeting is not directly related to the employee's job; AND
4. The employee does not perform any productive work during such attendance.

If all of these conditions are not met, then the employee must be paid for attendance at lectures, meetings, training programs and similar activities

WAGE DEDUCTIONS

The only deductions that may be made from employees' wages are those which are permitted or required by law. Those would include taxes, Social Security, etc. and, with the employee's written authorization or sufficient employer documentation, cost of goods or services (other than uniforms) provided by the employer to the employee for which repayment was intended.

Lacking a statutory provision which would require or permit employers to do so, employers may not deduct or withhold wages for such things as: an employee's refusal or inability to provide or sign documents such as I-9 forms, tax withholding forms, etc.; an employee's refusal to provide a notice of or reason for termination; an employee's refusal to sign a document written by the employer, etc.; an employee's inability or refusal to accept the wages in person (postal delivery is an acceptable means for the employer to comply with the timely payment of wage law); uniforms or the maintenance thereof; poor job performance; alleged shortages, bad checks or credit cards; destruction of or missing

property; etc. Allegations of damages and improper payment of wages are separate issues and must be dealt with, if necessary, in separate court actions. Recovery of alleged damages may be possible through civil action, whereas illegal withholding of wages is in violation of Vermont's criminal statutes and criminal prosecution is possible.

PAY DAY REQUIREMENTS

Employers must pay employees on a weekly basis. However, after providing written notice to its employees, an employer may issue paychecks on a bi-weekly or semi-monthly basis.

Payday shall be within six (6) days of the last day of the workweek. If the employer discharges an employee, the employee must be paid within 72 hours from the time of discharge. An employee who voluntarily leaves an employment position, shall be paid on the last regular payday, or if there is no regular payday, on the following Friday.

With the written authorization of an employee, an employer may pay due wages by deposit through electronic funds transfer or other direct deposit systems to a checking, savings or other direct deposit account maintained by the employee.

Employers **must** provide a wage statement to its employees with each payment of wages. This statement shall set forth, at a minimum, the total hours worked, the hourly rate, gross pay and each deduction fully itemized.

TIME CARDS/TIME SHEETS

An employer may not withhold an employee's wages for lack of a completed time card or time sheet. As far as the proper amount of the compensation due the employee, unless an employer is made aware that an employee is absent from specific work hours, the wages must be paid for all scheduled hours. Adjustments may be made on future wages.

Moreover, if an employer utilizes time clocks, early or late clock punching, which results in minor discrepancies, can be disregarded. Furthermore, generally, the practice of rounding the employees' starting and finishing time to the nearest five minutes, nearest one-tenth or quarter of an hour will be accepted, unless such practice, over time, results in the failure to compensate employees properly for all the time they have actually worked.

RECORDKEEPING

Under Vermont law, an employer is required to maintain, for two years, true and accurate records of the hours worked by each employee and of the wages paid to each employee. Furthermore, upon demand, an employer is also required to furnish to the Commissioner of the Department of Labor a sworn statement of these records and allow the Commissioner, their deputy or authorized agent to conduct an inspection of the records at any reasonable time. If an employer violates this regulation, it shall be fined not more than \$100.00.

BENEFITS AND/OR WAGE SUPPLEMENTS

An employer is **not** required to provide its employees with paid or unpaid holidays (such as "Memorial Day" or "Thanksgiving"), paid or unpaid sick leave (except under the Parental, Family Leave Act), paid or unpaid vacation time or severance pay when an employee leaves the business.

However, employers who are parties to written agreements, which can be in the form of an employee handbook, memorandum, correspondence, etc, providing for vacation time, sick leave, holidays and/or severance pay are liable to their employees for these benefits.

In the case where benefits and/or wage supplements are offered in a collective bargaining agreement (union contract), an aggrieved employee should contact his/her union representative.

Employees aggrieved over unpaid retirement or profit sharing plans

should contact the ERISA Division of the U.S. Department of Labor at (617) 565-9600.

UNIFORMS

Where an employer requires an employee to wear a specific uniform, the cost of providing and maintaining the uniform shall neither be deducted from an employee's wages nor shall any compensation pass between the employer and its employees. However, an employer may require an employee to purchase the articles of clothing from a third party.

JURY DUTY/WITNESSES

When an employee serves as a juror or participates as a witness in a proceeding, his/her employer is **not** required to pay the employee's wages. However, for the purpose of determining seniority, fringe benefits, credit towards vacations and other rights, privileges and benefits of employment, these employees shall be considered in the service of their employer during all times while serving as jurors or appearing as witnesses. An employer who violates this provision shall be fined not more than \$200.00.

PAYMENT FOR MEDICAL EXAMINATION

An employer may not require an employee or applicant for employment to pay the cost of a medical examination as a condition of employment. An employer who violates this provision shall be fined not more than \$100.00 for each and every violation.

BREAKS AND LUNCH PERIODS

Under Vermont law, an employer must provide its employees with "reasonable opportunity" to eat and use toilet facilities in order to protect the health and hygiene of the employee.

Federal law mandates that if an employer provides a lunch period, it is counted as “hours worked” and must be paid UNLESS the lunch period lasts at least thirty minutes and the employee is completely uninterrupted and free from work.

DRUG TESTING

The Vermont Drug Testing Act restricts an employer’s ability to require job applicants and employees to submit to drug testing as a condition of employment.

Drug testing of job applicants:

1. Applicant given offer of employment conditioned on negative test result;
2. Applicant given a written notice listing drugs to be tested, testing procedures, and stating that therapeutic levels prescription drugs not reported; and
3. Drug test administered as required by statute.

Drug testing of employees:

Random drug testing is prohibited, except where required under federal law.

Exception to the general prohibition:

1. Employer has probable cause to believe employee is using or is under the influence of a drug on the job;
2. Employer provides or makes available to the employee a bona fide rehabilitation program;
3. Employee is not terminated while in the rehabilitation program or after successful completion of the program (However, employee may be suspended for up to three months while participating in the program and may be terminated if after completing the program the employee fails a subsequent drug test);
4. Drug test administered as required by law;

5. Employee shall be provided with opportunity to explain the results as well as provide opportunity to retest a portion of the sample; and
6. All information shall be kept confidential.

If an employer administers a drug test, it must comply with the following requirements:

1. Employer must establish a written policy;
2. Employer may **not** request or require a blood sample;
3. Employer shall utilize a laboratory designated by the Department of Health;
4. Employer shall establish a chain of custody procedure;
5. If urinalysis is employed, the employer shall require confirmation tests for positive results and provide the tested employee with the opportunity to have a blood sample drawn; and
6. Employer shall insure that a positive sample is preserved for accurate retesting for not less than 90 days after the employee receives the result.

RESOURCE LISTING

Vermont Department of Labor

Wage and Hour Division General Information	802-828-0267
Automated Attendant (to order materials)	802-828-2157

Vermont Department of Labor

Web Site:	www.state.vt.us/labind
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Vermont Department of Employment & Training:	802-828-4000
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Vermont Attorney General's Office, Civil Rights Division:	802-828-3657
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Vermont Labor Relations Board:	802-828-2700
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Vermont Department of Taxes:

Employers – Business Tax	802-828-2551
Employees – Taxpayer Services	802-828-2865

Vermont Department of Banking, Insurance, Securities and Health Care Administration (VIPER information)	800-631-7788
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U.S. Department of Labor, Pension and Welfare Benefits Administration (ERISA information)	617-565-9600
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U.S. Department of Labor, Wage & Hour Division	802-951-6283
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U.S. Department of Labor Web Site:	www.dol.gov
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